

6-1979

Review of Administrative Regulations: The Experience of Other States, the Federal Government, and Options for California

Manuel P. Hernandez
Assembly Office of Research

Assembly Office of Research

Follow this and additional works at: http://digitalcommons.law.ggu.edu/caldocs_assembly

 Part of the [Administrative Law Commons](#), and the [Legislation Commons](#)

Recommended Citation

Hernandez, Manuel P. and Assembly Office of Research, "Review of Administrative Regulations: The Experience of Other States, the Federal Government, and Options for California" (1979). *California Assembly*. Paper 539.
http://digitalcommons.law.ggu.edu/caldocs_assembly/539

This Committee Report is brought to you for free and open access by the California Documents at GGU Law Digital Commons. It has been accepted for inclusion in California Assembly by an authorized administrator of GGU Law Digital Commons. For more information, please contact jfischer@ggu.edu.

REVIEW OF ADMINISTRATIVE REGULATIONS:

THE EXPERIENCE OF OTHER STATES, THE FEDERAL GOVERNMENT, AND OPTIONS FOR CALIFORNIA



BY

MANUEL P. HERNANDEZ

ASSEMBLY OFFICE OF RESEARCH

Richard W. Brandsma

Director

June 1979

**KFC
781
. H37
1979**

No. 738

KFC
781
.H37
1979

GIFT-ESP

LELAND STANFORD JUNIOR
UNIVERSITY

REVIEW OF ADMINISTRATIVE REGULATIONS:
THE EXPERIENCE OF OTHER STATES,
THE FEDERAL GOVERNMENT, AND
OPTIONS FOR CALIFORNIA

By

Manuel P. Hernandez

ASSEMBLY OFFICE OF RESEARCH

Richard W. Brandsma
Director

June 1979

79-7-07

TABLE OF CONTENTS

	<u>Page</u>
EXECUTIVE SUMMARY	1
INTRODUCTION	3
CURRENT CALIFORNIA LAW AND PROCEDURES	5
REGULATIONS REVIEW IN OTHER STATES	7
REGULATIONS REVIEW BY THE FEDERAL GOVERNMENT	14
CONCERNS OF PRIVATE SECTOR ENTITIES, EXECUTIVE AGENCIES, AND LEGISLATIVE STAFF REGARDING REVIEW IN CALIFORNIA	16
CONCLUSIONS	20
FOOTNOTES	23
APPENDIX 1: Examples of Departmental Materials Containing Regulations Which Are Not Found in the California Administrative Code	
APPENDIX 2: Survey Questionnaire and Summary Responses From Legislative Offices Reviewing Administrative Regulations	
APPENDIX 3: Survey Questionnaire and Summary Responses From Executive Offices Responsible for Administrative Regulations	
APPENDIX 4: Constitutionality of the Congressional Veto	
APPENDIX 5: 1977-78 and 1979-80 Session California Legislation Regarding Review of Regulations	
BIBLIOGRAPHY: Review of Administrative Regulations	

EXECUTIVE SUMMARY

CONCLUSION

The rapid growth in the number of regulations contained in the California Administrative Code, the existence of numerous rules and regulations outside of the code, and the public concern regarding unnecessary and burdensome regulations suggest the need to establish a formal mechanism for reviewing administrative regulations.

The principal policy questions regarding the establishment of a formal review process are: 1) What governmental entity should review regulations? 2) What should be the scope of the review? 3) What powers should reside in the reviewing entity? 4) What time constraints should be established for the review? and 5) What cost is involved in establishing an effective means of reviewing regulations?

FINDINGS

1. A review of regulations by the Legislature or the executive branch appear to be the more workable options.
2. The scope of regulations review varies considerably among the states. It is not clear if it is better to review all or only selected regulations. If a review of selected regulations is chosen, one suggestion is to restrict the review to regulations adopted pursuant to major legislation. If the Legislature assigns the regulations review function to an office in the executive branch, the executive office should be required to inform and consult with legislative standing committees or research offices when there are substantive concerns on major regulations.

3. The more effective regulations review programs are in those states where the reviewing body has the authority to disapprove rules.
4. The review process appears to work better in states that have established a specific time limit for reviewing regulations.
A maximum of 90 days appears to be appropriate.
5. A review of all proposed state regulations in California would require a professional staff of between five and 20 persons at an annual cost of \$200,000 to \$800,000 and a review of all proposed and existing regulations would require between 10 and 40 personnel-years at an annual cost of \$400,000 to \$1,600,000.

INTRODUCTION

The issue of whether or not to review administrative regulations has captured nationwide attention. Thirty-four states have enacted a legislative procedure to review regulations, dozens of bills have been proposed in the Congress regarding this issue, and no less than 14 bills have been introduced in California during the 1977-78 and 1979-80 legislative sessions proposing the establishment of a formal review process for administrative regulations.¹

Between 1973 and 1978, the size of the California Administrative Code, which contains formally adopted regulations of approximately 150 state agencies, has grown from 13,500 pages to over 27,000 pages. The Administrative Code, however, does not contain all of the state's administrative regulations. Many rules and regulations are contained in departmental manuals, directives, releases, guides, and bulletins (See appendix 1). Generally the public is not provided adequate notice or an opportunity to comment on rules and regulations contained in these publications. Numerous complaints have been raised by the public about unnecessary and burdensome regulations.

At the request of the Committee on Governmental Organization, the Assembly Office of Research conducted a study of the subject of review of administrative regulations between November 1978 and April 1979. The study involved a literature search of the subject and a survey of the 34 states that have a formalized process for legislative review of administrative regulations.² A questionnaire was sent to the legislative committee or office that reviews the regulations and

another was sent to the executive office which either is responsible for ensuring that the regulations are promulgated in conformance with the state's Administrative Procedure Act (typically the Secretary of State) or which reviews the regulations for legal or constitutional standing (the Attorney General's Office). Among the areas covered by the survey were questions involving the authority, scope, purpose, structure, powers, time, workload requirements, and effectiveness of the review process. Responses were received from 20 of the 34 legislative offices and 14 of the 34 executive offices. (A detailed summary of the survey responses from the legislative and executive offices is contained in appendices 2 and 3.). To obtain details on the process and effectiveness of executive review of regulations, telephone interviews were made of the legislative and executive offices in the two states where the Governor reviews departmental regulations.

In addition to the survey of the states, interviews were conducted with individuals in the executive branch, the Legislature and the private sector in California regarding their concerns and suggestions about reviewing regulations.

CURRENT CALIFORNIA LAW AND PROCEDURES

Most regulations of state agencies are subject to the Administrative Procedure Act (APA), Government Code Sections 11370-11528. Section 11371 defines "regulation" as "every rule, regulation, order, or standard of general application or the amendment, supplement or revision of any such rule, regulation, order or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure, except one which relates only to the internal management of the state agencies."³

The Administrative Procedure Act basically requires state administrative agencies to provide the public with advance notice of the content of new regulations or regulation changes. It provides the public an opportunity to comment on the regulations, and gives the groups or individuals who will be affected by the regulations time to prepare for operating under the new or revised regulations.⁴

The Office of Administrative Hearings (OAH) in the State Department of General Services is responsible for reviewing agency regulations for compliance with the Administrative Procedure Act regarding public notice requirements, appropriate style, and citation of authority. In addition, the OAH is required to (1) file with the Secretary of State and the Rules Committees of the Legislature each state agency's adopted and repealed regulations (Government Code Section 11380), (2) send standing committees of the Legislature a copy of the California Administrative Register, which includes notices of proposed actions (Government Code Section 11409.7), (3) file with the Senate Rules Committee and the Speaker of the Assembly proposed regulation changes at least 30 days prior to their adoption (Government Code Section

11423), and (4) include in the notice of proposed rule changes an estimate of direct costs or savings to state agencies resulting from such rule (Government Code Section 11424).

Under the Administrative Procedure Act, no regulation is valid unless it is consistent with the authorizing statute, is reasonably necessary to effectuate the purpose of the authorizing statute, and is promulgated in accordance with the requirements of the Administrative Procedure Act. In the case of emergency regulations, the facts cited in the statement of emergency must constitute an actual emergency (Government Code Sections 11374 and 11440). A regulation is normally effective 30 days after it is filed with the Secretary of State unless the authorizing statute specifies otherwise, it concerns either an emergency or an agency's reorganization, or the issuing agency prescribes a later date (Government Code Section 11422). Emergency regulations can become effective upon filing and are in force for no more than 120 days unless readopted with the express prior approval of the Governor (Government Code Section 11422.1).

The Administrative Procedure Act does not authorize any state office to review regulations for clarity, effectiveness, legality, need, or taxpayer expense.

REGULATIONS REVIEW IN OTHER STATES

As of 1978, the legislatures in 34 states, the Governors in two states, and the Attorneys General in several states were authorized to review administrative regulations.⁵ The review procedures of the states vary in terms of the authority for reviewing regulations, the scope of the review, the structure of the reviewing office, the powers of the reviewing office, and the time constraints for conducting the review.

AUTHORITY

The authority for conducting a review of administrative regulations may be a concurrent resolution of the Legislature, a statute, and/or a constitutional provision. In most states, the authority to review administrative regulations is a statute.

SCOPE

Of the 34 states that have established legislative review of regulations, six states review proposed regulations, 14 states review existing regulations, and 14 states review both proposed and existing regulations. Two states only review regulations of specified agencies. In the two states where the Governor reviews regulations, only proposed regulations are examined.

We found that 36 states review regulations which have been issued to interpret state statutes but few states review regulations derived from federal statutes or court orders. Also, a few states review regulations which are contained in publications other than the official Administrative Procedure Act (APA) publication.

PURPOSE

The purpose of the review of regulations varies. Review may be to determine if regulations are constitutional, reasonable, vague, arbitrary, capricious, consistent with legislative intent, contain substantive errors, and/or are beyond the authority delegated to the agency.

STRUCTURE

In the 34 states, legislative committees or offices review administrative regulations. The most common review body is the special joint committee, although some states assign the review function to existing committees or research offices that report to the Legislature. In 18 states, one or both houses of the Legislature must sustain the review committee's action before a rule is disapproved.⁶

The Attorneys General in at least three states review regulations for legality or constitutional standing while, in several other states, the Secretaries of State review regulations for adherence to public notice requirements and conformance with required format.

POWERS

Twelve state legislatures have only advisory powers with regard to regulation review. Six legislatures have the power to disapprove proposed regulations, several are empowered to nullify existing regulations, 11 legislatures can modify regulations and several others have a combination of these powers. Nine state legislatures have authorized a review committee to disapprove or suspend rules during an interim period.

If the legislature has the power to approve or disapprove regulations, it is said to have "legislative veto" power. If a review committee has the power to disapprove regulations, it is said to be empowered with the "committee-veto." Similarly, if one house of the legislature is authorized with such power, it is said to be empowered with the "single-house veto," which can be employed by passing a one-house resolution.⁷

In most states, if the initial review committee votes to suspend a rule, it must introduce a bill or resolution for consideration. If the bill or resolution is enacted or adopted, the rule is repealed and may not be reinstated by the agency. If the bill or resolution is not enacted or adopted, the rule stands and the review committee may not suspend it again.

In states where the Governor is authorized to approve and disapprove regulations, wide discretion in assessing the appropriateness of the regulations is provided since the APA of these states does not set standards.

TIME LIMITS AND WORKLOAD

In most states which have a process for the review of administrative regulations there is no specific time limit for the legislature or executive review office to disapprove regulations. The time limits in states which have them vary from the end of the next regular session of the legislature to anywhere between 30 days and two years. The survey suggests that the review process works better in states that have established specific time limits on the period for reviewing regulations.

The amount of time required to review regulations ranged from one week to two years. On the average, 170 regulation sets are submitted annually for review. The regulation review offices in the different states have commented on as few as seven regulations to as many as 550 regulations since the review function was established (in most states since 1975). Regulation review committees generally meet once each month for three to eight hours. Staff requirements for review efforts range from one-half of a personnel-year to 15 personnel-years annually.

CONSTITUTIONALITY

Legislative Review

Separation of powers is a potential constitutional issue with regard to legislative review of administrative regulations. If legislative review of administrative regulations is only advisory or culminates in a statute, the literature does not identify a constitutional problem. The legislatures, their committees, or individual members may comment on regulations under current law and the legislatures, of course, are authorized to make, repeal, and change laws.

The constitutional issue of separation of powers arises when legislatures suspend or nullify regulations by means of committee action, or by means of a single or two-house resolution. Such action is referred to as the "legislative veto."

The separation of powers question exists with regard to the legislative veto because it is not clear (1) whether rulemaking is more a function of lawmaking or of carrying out the law, and (2) whether a legislature can invalidate a rule by means of a resolution. Proponents of the legislative veto contend that because the legislature authorizes

executive agencies to promulgate regulations,⁸ it can also as a body or through one of its committees suspend or nullify regulations. Proponents further contend that because the legislature is accountable to the electorate, but agency officials are not, the legislature is the proper branch of government to make, modify or repeal all laws, including administrative regulations.

Opponents of the legislative veto contend that carrying out the law is the function of the executive branch of government and that rulemaking is a function of carrying out the law. Opponents also contend the legislature may not veto regulations by resolutions since the legislature may make no law except by statute. Opponents consider a regulation to be a law that can be modified only by statute or another regulation. They contend that for the legislature to change a law, it must enact a bill, but for an administrative agency to modify a regulation, which has the effect of law, it must only adopt another regulation.

The issue of whether the legislative veto of regulations is constitutional has not been resolved at either the state or federal levels. Although there have been numerous lawsuits on this issue, the courts have declined to render a decision. Some states which exercise the legislative veto have an authorizing provision in their constitutions while others do not.

Executive Review

The literature did not disclose constitutional issues arising from executive review of administrative regulations. A constitutional issue may exist, however, when one executive department attempts to void the

regulations of another executive department that has a separate constitutional standing.⁹

EFFECTIVENESS

The legislative offices that review regulations generally reported that such review has been working well. Benefits include more readable rules, greater public awareness of rules, greater care by the agencies in drafting regulations, more legislative awareness of the content of regulations, and the opportunity for the legislature to determine whether its policies are being implemented.

The executive offices were nearly evenly divided in their assessment of how regulation review efforts by legislatures have worked. Some said that the review efforts had almost no effect on regulations and had increased costs. Others reported that legislative comments have significant impact on the formulation of regulations. Other comments regarding legislative review include: (1) it may prevent agencies from taking firm stands on unpopular topics, (2) it has resulted in improved regulations, (3) it has created another body to whom interest groups could appeal, and (4) it has caused delays in carrying out the law.

Legislative review of regulations appears to work well if the following conditions exist: (1) the authorizing statute for regulation review is clear and sufficiently detailed regarding both the procedures to be used in reviewing regulations and the responsibilities of the parties involved in the review process, (2) the reviewing entity is interested in reviewing regulations and devotes time to making the review process work, and (3) there is sufficient staff assigned to the task. When one or more of these elements is missing, the effectiveness of the review diminishes.

The review of regulations by the Governors in Hawaii and Indiana works reasonably well because the Governors maintain liaison staff with the departments who are informed of new developments in the agencies.

Among the suggestions made by legislative and executive offices to improve the review of regulations were that (1) there be an increase in the number and expertise of staff conducting the review, (2) agencies be prohibited from publishing their official policies in any document other than the official APA publication since such practice avoids the APA requirements of public notice and consideration of public comments, (3) the legislature not delegate so much authority to administrative agencies, and (4) legislative intent of laws be clearly stated.

REGULATIONS REVIEW BY THE FEDERAL GOVERNMENT

To date, the United States Congress has not established a process of review and prior approval of all federal agency rules. Authority for Congress to review certain regulations is contained, however, in specific acts. An example is the Pension Reform Act, P.L. 93-406, which authorizes either House of Congress to disapprove the implementing regulations within 120 days of their receipt.¹⁰ This and other such specific limitations on executive authority are known as the "Congressional Veto."

The term "Congressional Veto" covers a wide range of statutory devices by which Congress establishes a program but retains legal authority to approve or disapprove part of the program before final implementation by the executive agency. The agencies are usually required to submit proposals for congressional review 60 or 90 days before their effective date. In general, the proposed action is automatically effective at the end of the specified period unless either House of the Congress vetoes it. In a few cases, however, Congress must approve the proposal by an affirmative vote.¹¹ Appendix 4 presents the constitutional arguments for and against the Congressional Veto.

In 1978, President Jimmy Carter established a Regulation Analysis Review Group within the Council of Economic Advisors to review economic impact statements regarding selected proposed regulations. Ten to 15 of the most expensive proposed regulations are reviewed annually by this group for relevancy, cost, and the effect on the public. The group does not have formal power to approve or disapprove regulations but does recommend modifications that would affect costs to the agency heads and/or the President.

The President also established a Regulatory Council, composed of 35 regulatory agencies, to review regulations that cross agency lines. The primary purpose of this council is to prevent the issuance of duplicative or inconsistent regulations and coordinate regulatory activity so the business sector and general public are not overburdened by the actions of the agencies. The Regulatory Council publishes a single calendar of major regulations planned by the agencies.

Because the Regulation Analysis Review Group and the Regulatory Council were just established in 1978, there has not been sufficient experience to evaluate their performance in reviewing regulations.

CONCERNS OF PRIVATE SECTOR ENTITIES, EXECUTIVE AGENCIES, AND
LEGISLATIVE STAFF REGARDING REGULATIONS REVIEW IN CALIFORNIA

Representatives of business, labor, a tax monitoring group, and staff from California administrative agencies and the Legislature were asked several questions regarding the establishment of a process for reviewing administrative regulations.

NEED

The representatives of business and labor stated that a review of regulations is appropriate because many rules are unnecessary and/or burdensome. These individuals were very concerned that neither the Legislature nor the Governor is aware of many regulations that are issued.

They also expressed concern, however, that establishing an independent office to review regulations could increase the participants in a policy issue in comparison to the present three possible participants, i.e., the issuing agency, the courts, and the legislature.

Staff from administrative agencies generally stated that a review of regulations by an entity other than the rulemaking agency was not needed, although several persons expressed the opposite opinion. The main reasons given for the prevailing view were that regulations are only issued to carry out the mandates of statutes or court orders and that formal notice is presently given to the public and the Legislature on proposed and adopted regulations.

Legislative staff generally stated that administrative regulations need to be reviewed in order to determine whether the intent of legislation is being correctly interpreted by agencies. If the Legislature

decided to review the regulations of all agencies, they felt additional staff would be required.

Reasons given for not establishing a formal means of reviewing regulations include the fact that an informal review of regulations is already conducted by state agencies and various legislative committees, a formal judicial review of regulations is available upon suit in the superior court with appeal rights up to the State Supreme Court,¹² and evaluations of agency performance in carrying out programs are periodically conducted.

Evaluations of departmental performance, for example, are periodically conducted by the Auditor General, the Legislative Analyst, and other legislative staff. Most audits, budget reviews, investigations, or hearings, however, focus on a particular program or area of controversy. Within the Legislature, there does not exist the time nor the capacity to review systematically, within a fixed time frame, such as two-years, the functions of all state departments, boards, commissions, and agencies for conformance with statutory mandates. A large part of this limitation is due to the numerous and complex statutory mandates imposed by the federal government upon state agencies.

An example of judicial review of the adequacy of a California administrative regulation is Armistead v. State Personnel Board, 22 Cal. 3d 198 (September 22, 1978), in which the California Supreme Court ruled that a section of the Personnel Transactions Manual, a manual containing detailed personnel rules of the State Personnel Board, was invalid because it constituted a rule of general application that was not duly promulgated and published as required under the Administrative Procedure

Act. The court also found that the manual was distributed only to personnel officers and not made readily accessible to other employees.

Perhaps more importantly, Armistead raises a question as to the validity of many other manuals, directives, instruction letters, and guidelines of departments which also have general application and are not duly promulgated and published according to the requirements of the Administrative Procedure Act.

REVIEW BODY

Most representatives of business and labor favored having the Legislature review administrative regulations. They stated that since the Legislature is responsible for making the laws of the state, it should monitor the development of programs by agencies.

Most state agency staff said that if regulation review were to become mandatory in California, an executive agency office would be better able to conduct the review than the Legislature because of the Legislature's time constraints and lack of technically trained staff in many subject areas administered by the departments. Several agency staff persons, however, stated they preferred that the Legislature review departmental regulations because (1) the Legislature enacts the laws which are the source of most regulations, and (2) a constitutional problem may be created if one executive agency is assigned to review, with approval and disapproval power, the regulations of another constitutionally equal executive officer, system, or agency.

Other major concerns of agency staff regarding regulation review were that (1) legislative disapproval may violate the separation of

powers principle, (2) some interest groups may increase their bargaining position if a central executive office or a legislative entity is empowered to approve and disapprove regulations, (3) legislative review of regulations could expand the political arena for deciding what steps to take in carrying out the law, and (4) delays may occur in the adoption of regulations which could adversely affect various segments of the public particularly with regard to health and safety.

State agency staff also expressed concern that the establishment of a new entity to review regulations would (1) duplicate the efforts of some departments that currently conduct an internal review of regulations proposed by their divisions, (2) reduce the importance of the APA hearing process because the review office would have final authority, (3) result in an increase in complaints about the time required to implement laws, and (4) result in more emergency regulations being issued to avoid the review process (in 1977, approximately one-third of all regulations issued were emergency regulations).

Legislative staff generally did not express a preference for a particular office or branch of government to conduct a formal review of regulations. They noted that an informal review of regulations of some agencies is presently conducted by committee staff. Among their major concerns were that (1) workload would increase significantly if all regulations were reviewed by the Legislature and staff were not added to perform this function, and (2) reviewing regulations may not be as important a function as monitoring the performance of agencies to determine if they are complying with legislative intent. Several persons expressed the opinion that regulations should be reviewed by the Legislature only as part of a broader investigation of how an agency is implementing state and/or federal programs.

CONCLUSIONS

The rapid growth in the number of regulations contained in the California Administrative Code, the existence of numerous rules and regulations outside of the code, and the concern by the public regarding unnecessary and burdensome regulations suggest the need to establish a formal mechanism for reviewing administrative regulations.

The principal policy questions regarding the establishment of a formal review process are: 1) What governmental entity should review regulations? 2) What should be the scope of the review? 3) What powers should reside in the reviewing entity? 4) What time constraints should be established for the review? and 5) What cost is involved in establishing an effective means of reviewing regulations?

CHOICE OF GOVERNMENTAL ENTITY

The governmental entities that could be assigned and/or created to review administrative regulations are (1) the Legislature, (2) the executive branch, (3) an independent commission, and (4) the courts. Based on available information and the experience of other states, a review of regulations by the Legislature or the executive branch appear to be the more workable options.¹³

The advantages of legislative review are:

- 1) The Legislature is in the best position to evaluate conformance with legislative intent;
- 2) The experience of other state legislatures with successful review procedures could be applied in California; and
- 3) The limited and informal review of regulations that is already being conducted by standing committees could be formalized.

The disadvantages of legislative review are:

- 1) The constitutional issue of separation of powers that could be raised, although the courts have declined to rule on this issue in other states;
- 2) The imposition of significant new workload on members; and
- 3) The difficulty of holding review hearings and investigations because of the absence of members during legislative recesses.

The advantages of executive branch review are:

- 1) Lower initial costs and a shorter training period due to availability of technically trained staff;
- 2) Greater access to technically trained personnel to evaluate the necessity of certain rules, e.g., drug contents and other health safety regulations;
- 3) Potentially greater acceptance and more cooperation by the executive departments; and
- 4) Year-round availability of both officials and staff to review regulations.

The disadvantages of executive branch review are:

- 1) Potential conflict with other separately established constitutional offices, e.g., State Board of Equalization, and
- 2) Assessment of conformance with legislative intent may not be adequately served by the executive branch.

SCOPE

It is not clear if it is better to review all or only selected regulations because of the wide variation in the scope of other states' regulations review. One way, however, to limit the scope of regulation review

would be to restrict the review to major legislation. This could be done in the same manner as the Congressional Veto, wherein the authorizing statute contains a clause which makes final approval of the executive action contingent on legislative consideration. Another way to limit legislative involvement in reviewing regulations would be to require the executive review office to inform and consult with the legislative standing committees or research offices when there are substantive concerns on major regulations.

POWERS

The powers which could be assigned to the review body include 1) advisory powers only, 2) authority to suspend proposed regulations, 3) authority to nullify existing regulations, or 4) a combination of advisory and suspension and/or nullification powers. States where the review body has the authority to disapprove rules have the more effective programs.

TIME CONSTRAINTS

The review process appears to work better in states that have established a specific time limit for reviewing regulations. A maximum of 90 days appears to be appropriate for review of proposed regulations.

COSTS

Based on the experience of the other states, it is estimated that a review of all proposed state regulations in California would require a professional staff of between five and 20 persons at an annual cost of \$200,000 to \$800,000 and that a review of all proposed and existing regulations would require between 10 and 40 personnel-years at an annual cost of \$400,000 to \$1,600,000.¹⁴

FOOTNOTES

1. In most instances, the bills proposed that standing committees of the Legislature conduct a review of administrative regulations. See appendix 5, "1977-78 and 1979-80 California Legislation Regarding Review of Administrative Regulations."

One resolution (ACR 45, Resolution Chapter 48, Statutes of 1978), was passed. It currently authorizes the Senate Rules Committee and the Assembly Speaker to direct standing committees or the offices of research of each house to study proposed or existing regulations. The reviewing committee or office is required to transmit its concerns, if any, and its recommendation that a concurrent resolution be adopted which either requests the regulatory agency to reconsider its action or the Legislature to enact a statute to restrict the regulatory powers of the state agency.

2. The following 34 states have a formalized process for legislative review of administrative regulations:

Alaska, Arizona, Arkansas, Colorado, Connecticut, Florida, Georgia, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New York, North Carolina, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Vermont, West Virginia, Wisconsin, and Wyoming.

3. Section 11371 of the Government Code specifies that regulations of the judicial and the legislative branches of state government are exempt from the APA requirements. Section 11371 of the Government Code also specifies that forms prescribed by a state agency or any instructions relating to the use of the form are excluded from the definition of regulation.
4. Section 11409 of the Government Code permits the Office of Administrative Hearings (OAH) to exempt regulations which it finds impractical to print, such as detailed schedules or forms otherwise available to the public, or which are of limited or particular application from being printed in the official APA publication, the California Administrative Code. Instead, such regulations may be cited in the California Administrative Code.
5. Most state legislatures have enacted authority to review regulations since 1975, although several states established this authority prior to 1960. The 34 states where the legislatures review regulations are noted in footnote 2. The Governors review regulations in Hawaii and Indiana. The Attorneys General review regulations in Colorado, Iowa and Maryland. In Georgia, the Attorney General drafts most of the adopted rules.
6. States in which the legislature must sustain committee action or recommendation are: Alaska, Arizona, Colorado, Georgia, Idaho, Kansas, Maine, Maryland, Minnesota, Montana, New York, Ohio, Oklahoma, South Carolina, South Dakota, Vermont, Wisconsin, and Wyoming.

7. One problem with a committee-veto is that a small number of the legislative membership can nullify the expressed intent of a previous majority of the full legislature and the Governor. This problem also arises, although to a lesser extent, when one house exercises the single-house veto. In the single-house veto, a minority of the legislature (but a majority of one house) can nullify the expressed intent of a previous majority of both houses of the legislature and the Governor. The literature we reviewed, suggest that statutory action and concurrent resolutions rest on a more solid constitutional foundation than committee-vetoes or single-house vetoes.

It may be noted that the California Legislature is currently authorized to exercise a one-house legislative veto over the sale of revenue bonds to finance the construction of environmental pollution control facilities (Constitution Article XVI, Section 14, and Health and Safety Code Section 44541).

8. Administrative agencies receive their authority to issue regulations through the delegation of such power from the legislature. The legislature not only gives the authority to an agency to issue regulations but it can also take away such authority. Proponents state that the courts until the 1930's often refused to permit the Congress and the state legislatures the authority to delegate "legislative powers" to executive agencies. Finally, the courts consented to this delegation of legislative authority when it recognized that society had become very complex and that there did not exist sufficient time for the Congress to act on all matters deserving of governmental attention. The courts, however, required that the delegated authority given the agencies be specified in statute.
9. Executive agencies such as the State Board of Equalization, the Department of Education, the State Controller, the Attorney General, the Secretary of State, the Treasurer, and the University of California.
10. Congressional Oversight: Methods and Techniques, prepared for the Subcommittee on Oversight Procedures of the United States Senate Committee on Government Operations, by the Congressional Research Service of the Library of Congress and the General Accounting Office, 94th Congress, 2nd Session (Committee Print), July 1976, pp. 17-20.
11. Ibid, p. 17.
12. None of the states surveyed had significantly different systems than California for the courts to review administrative regulations.
13. We did not find independent commissions in other states or in the federal government conducting a review of administrative regulations.

Since no experience is available on the operation of an independent commission to review administrative regulations, it is not possible to project how well this alternative would work in California. Theoretically, the independent commission would have a more objective view of the regulations being considered since it would have neither participated in the drafting of the authorizing statute nor the regulation. On the other

hand, an office without a direct linkage with any of the three branches of government could more easily lose public support and effectiveness than a legislative committee or an executive branch office since it would neither have recognizable constituent base nor an equal constitutional standing with the three branches of government.

14. The staff estimates were developed as follows:

Facts:

- 1) The other states surveyed issued approximately 170 regulation sets on an annual average basis.
- 2) The average number of staff used in conducting a review of such proposed regulations was approximately 2.2 personnel-years. (This does not count the staff effort expended on existing regulations.)
- 3) California agencies issued approximately 800 regulation sets during 1977.

Assumption:

California regulation-sets are no less and no more complex or lengthy than the regulation-sets of other states.

Conclusions:

An estimated 10 personnel-years are necessary to conduct regulation review of proposed formal regulations at the level of effectiveness as currently conducted by other states and if the review is not extended to "informal regulations."

The formula is: $\frac{170}{800} = \frac{2.2}{x}$

$$\begin{aligned} 170x &= 2.2 (800) \\ x &= \frac{2.2 (800)}{170} \\ x &= \frac{1760}{170} \\ x &= 10.35 \end{aligned}$$

If a review of proposed informal regulations is conducted, the guess is that staff requirements would at least double. ($10 \times 2 = 20$)

If proposed and existing regulations were reviewed, then the personnel-hour requirements would be estimated to double again from 20 to 40 personnel-years if all regulations (proposed and existing and formal and informal) are reviewed.

Average costs of reviewing regulations may decline as staff increases up to a certain point. That point is, however, currently indeterminate.

APPENDIX 1

EXAMPLES OF DEPARTMENTAL MATERIALS CONTAINING REGULATIONS WHICH ARE NOT FOUND IN THE CALIFORNIA ADMINISTRATIVE CODE

I. Medi-Cal Eligibility Manual.

This manual includes both regulations contained in the California Administrative Code and regulations not found in the California Administrative Code. It is prepared by the State Department of Health Services and covers approximately 800 pages.

The statutory authority for this manual appears to be Welfare and Institutions Code Section 10554.1 which authorizes the Director of the Department of Health Services to adopt regulations, orders, or standards of general application in department publications other than the California Administrative Code or the California Administrative Register if they are not promulgated pursuant to Welfare and Institutions Code Section 16309 or Health and Safety Code Section 1530. The California Administrative Register contains the departmental notices of proposed regulations and the periodic supplements to the California Administrative Code as authorized by Government Code Section 11409.

A copy of this manual and its updates are sent to and maintained by the Assembly Health Committee.

An example of a manual regulation developed from a regulation contained in the California Administrative Code is Medi-Cal Eligibility Manual, Regulation 2C of Manual Letter No. 8. This regulation was developed from California Administrative Code, Title 22, Section 50115.

II. California Department of Social Services (DSS) Manual of Policies and Procedures.

This manual is prepared by the State Department of Social Services. It consists of three volumes, and covers approximately 2,700 pages of regulations concerning among other things:

- 1) standards for county welfare departments to prevent welfare fraud;
- 2) instructions for carrying out the AFDC Program;
- 3) instructions for forcing absent parents to pay required child support payments; and
- 4) instructions for administering the Food Stamp Program.

The statutory authority for this manual appears to be Welfare and Institutions Code Section 10554. Section 10554 authorizes the Director of the Department of Social Services to adopt regulations, standards, and orders of general application in departmental publications other than the California Administrative Code or the California Administrative Register if the regulations are not promulgated pursuant to Welfare and Institutions Code Sections 16003, 16201, 16309.

A copy of this manual and its updates are sent to and maintained by the Assembly Human Resources Committee.

III. California Workers' Compensation Insurance Manual of Rules, Classifications, and Rates.

This manual is prepared by the Workers' Compensation Insurance Rating Bureau with the approval of the California Insurance Commissioner. The Workers' Compensation Insurance Rating Bureau is a private sector entity which suggests to the Insurance Commissioner minimum rates for workers' compensation insurance. The rates suggested by the bureau are subject to the approval of the State Insurance Commissioner. The Workers' Compensation Insurance Manual governs the underwriting of workers' compensation insurance and employers' liability insurance in California. The manual contains the rules governing such underwriting of insurance, identifies the classifications of occupations and businesses which may obtain workers' compensation insurance, and specifies the minimum rates at which such insurance may be sold. The manual contains approximately 200 pages.

Statutory authority for the manual is contained in Insurance Code Sections 11650-11663, 11732, 11732.1, 11740, 11750, 11750.1, and 11751. This manual is referenced in the California Administrative Code, Title 10, Section 2350.

EXAMPLES OF OTHER DEPARTMENTAL PUBLICATIONS

I. Department of Insurance Bulletins.

Bulletins of the Department of Insurance contain rules of the Department. An example is Bulletin No. 74-2B, Department of Insurance, dated January 15, 1979, concerning title insurance rebates. It is directed to all title insurers, underwritten title companies and controlled escrow companies.

Copies of these bulletins are sent to and maintained by the Assembly Finance, Insurance and Commerce Committee.

II. Department of Corporations Releases.

Releases of the Department of Corporations contain interpretations of statutory law. Release No. 3-F, Department of Corporations, dated September 30, 1971 (Enclosure F) contains guidelines for determining

whether an agreement constitutes a franchise. These releases are sent to and maintained by the Assembly Finance, Insurance, and Commerce Committee.

III. Industrial Compensation Rating Schedule.

This rating schedule is referred to in California Administrative Code, Title 10, Section 2351.

IV. Chemical and Dyestuff Rating Plan.

This rating plan is referred to in California Administrative Code, Title 10, Section 2351.1.

APPENDIX 2

SURVEY QUESTIONNAIRE AND SUMMARY RESPONSES

FROM LEGISLATIVE OFFICES REVIEWING

ADMINISTRATIVE REGULATIONS

Legislative Review Offices

Survey Questionnaire on Regulation Review

Please summarize your state's statute that establishes legislative review of administrative regulations.

1. When did the Legislature or one of its committees commence reviewing administrative regulations?
2. What is the scope of this legislative review?
3. What kind (e.g., attorneys, auditors, consultants) and how many staff are involved in this legislative review of administrative regulations?
4. What powers can be exercised by the Legislature, or the committee? How often are these powers exercised?
5. Approximately how many regulations (or volumes) are subject to the statute establishing regulation review by the Legislature?
6. On the average, how many new, revised, or repealed regulations are submitted by agencies for legislative review in a year's period? Approximately how many are actually reviewed annually by Members or staff of the Legislature who are assigned to review regulations?
7. Approximately how much time is devoted by Members and staff of the Legislature to the regulation review function?
8. Approximately how long does it usually take for the Legislature to review the regulations? (This should be from the beginning to the end of each phase. If different phases are involved, please estimate the approximate time required for each phase.)
9. Do you (or the legislative committee responsible for reviewing administrative regulations) generally express your concerns to or consult with the relevant executive agency prior to suspending or nullifying regulations? Would this be advisable?
10. Approximately how many regulations have been commented on either in an informal manner or through a legislative resolution since the enactment of the statute providing for regulation review by the Legislature? How many regulations have been suspended or nullified?
11. What have been the effect of the comments, rule suspensions, or rule nullifications on: (a) the existing rules or proposed rules, (b) the administrative agencies, (c) the Legislature, and (d) the judicial branch of government? (For example, after the Legislature acts on regulations, does the administrative agency ignore the Legislature's action, revise the regulations, or wait until the Legislature enacts a clarifying statute? Has legislative review required long delays in adopting regulations?)

12. Do you believe that private or public interest groups have strengthened their lobbying position because of the establishment of legislative review of administrative regulations? If so, which type of groups and what would you suggest be done to protect against such a development?
13. What is your overall assessment of how well (or not well) legislative review of administrative regulations is functioning?
14. What changes, if any, are necessary for a more effective program?
15. What are the favorable (beneficial to the public) and the unfavorable results of regulation review by the Legislature? What are the reasons for this?
16. Would you like to add any comments regarding your state's experience with this type of legislative review?

SUMMARY OF QUESTIONNAIRE RESPONSES FROM
LEGISLATIVE OFFICES REVIEWING ADMINISTRATIVE REGULATIONS

Responses to Questions:

1. Most commenced reviewing regulations subsequent to 1975.
2. The scope of regulations review varies widely.
3. The staff assigned to review regulations generally consists of attorneys or attorneys and analysts.
4. Types of powers that may be exercised range from advisory to nullification of regulations.
5. The number of volumes of regulations ranges from four volumes to 22 volumes and cover up to 21,000 rules.
6. An average of 170 regulation sets, covering 3,000 to 4,000 rules, are submitted annually for review by the legislatures. Generally, all regulations submitted for review are reviewed by the staff of the legislative committees.
7. Members of the regulation review committee generally meet once each month for three to eight hours at a time. The average amount of staff time devoted to regulation review by a legislature is four personnel-years, but the range is anywhere from one-half of a personnel-year to 15 personnel-years.
8. The length of time taken to review regulations ranges from one week to two years.

9. In nearly all states, members or staff of the regulation review committees consult with officials or staff of the executive agency prior to vetoing a regulation or recommending that a regulation be vetoed by the Legislature. Nearly all legislative committees stated that they believe this policy of consulting with the executive agency reduces the number of regulations that necessitate formal action by a committee or the full legislature.
10. Regulation review committees in different states have commented on as few as seven regulations and as many as 550 regulations since commencing their review function. In legislatures that have formal veto powers over regulations, the range of vetoes is anywhere from zero to 81 vetoes since regulation review was commenced. In one state (Florida), the administrative agencies have modified 394 regulations as a result of regulation review, which commenced in 1975.
11. (a) The legislative committees conducting regulation review stated that rules have generally become more readable, the public has become aware of the rules of administrative agencies, and generally the executive agencies modify the regulations objected to by the review committee.

(b) Agencies have become more careful in drafting regulations and some delays have resulted.

(c) Legislatures have become better informed of executive actions and are provided a larger role in formulating state policies.

(d) Very little information was available on the question of the impact on the judicial branch of regulation review.

12. Generally, the legislative committees responded that interest groups have not strengthened their lobbying position as a result of legislative review of administrative regulations, although a few stated that lobbying positions had been enhanced.
13. Generally, the legislative committees responded that legislative review of administrative regulations has been working well. One respondent said it was working poorly (due to lack of interest on the part of the members) and three others stated that it was working only fairly well (due to staffing needs and lack of authority to act on regulations during the interim or because the Legislature lacked the expressed power to suspend regulations).
14. The legislative committees stated that the changes needed to establish a more effective regulation review procedure include: a) more staff; b) a means to prevent agencies from avoiding the APA procedures by placing their policies in publications which are not the official APA publication; and c) the authority to review and comment on regulations during the legislative interim.
15. The favorable results of regulation review are reported to be: a) Legislators obtain a better understanding of the workings of the executive branch agencies; b) the legislature ascertains whether its policies are being implemented; and c) the public gains a forum to register concerns about regulations and a body to investigate complaints. The unfavorable result of regulation review is reported to be that the rulemaking process is delayed.

16. Among the comments made about regulation review by legislatures are: a) if a state elects to enact a law concerning formal regulation review, the statute should be very specific and as detailed as possible in order to avoid confusion and delays; and b) regulation review may not result in a reduction in the number of regulations but it should improve the quality of the regulations.

APPENDIX 3

SURVEY QUESTIONNAIRE AND SUMMARY

RESPONSES FROM EXECUTIVE OFFICES RESPONSIBLE

FOR ADMINISTRATIVE REGULATIONS

Executive Offices Responsible for Administrative Rules

Survey Questionnaire on Regulation Review

Please summarize your state's statute that establishes legislative review of administrative regulations.

1. When did the Legislature or one of its committees commence reviewing administrative regulations?
2. What is the scope of this legislative review?
3. What kind (e.g., attorneys, auditors, consultants) and how many staff are involved in this legislative review of administrative regulations?
4. What powers can be exercised by the Legislature, or the committee? How often are these powers exercised?
5. Approximately how many regulations (or volumes) are subject to the statute establishing regulation review by the Legislature?
6. On the average, how many new, revised, or repealed regulations are submitted by agencies for legislative review in a year's period? Approximately how many are actually reviewed annually by Members or staff of the Legislature who are assigned to review regulations?
7. Approximately how much time is devoted by Members and staff of the Legislature to the regulation review function?
8. Approximately how long does it usually take for the Legislature to review the regulations? (This should be from the beginning to the end of each phase. If different phases are involved, please estimate the approximate time required for each phase.)
9. Does the legislative committee responsible for reviewing administrative regulations generally express its concerns or consult with you or the relevant executive agency prior to suspending or nullifying regulations? Would this be advisable?
10. Approximately how many regulations have been commented on either in an informal manner or through a legislative resolution since the enactment of the statute providing for regulation review by the Legislature? How many regulations have been suspended or nullified?
11. What have been the effect of the comments, rule suspensions, or rule nullifications on: (a) the existing rules or proposed rules, (b) the administrative agencies, (c) the Legislature, and (d) the judicial branch of government? (For example, after the Legislature acts on regulations, does the administrative agency ignore the Legislature's action, revise the regulations, or wait until the Legislature enacts a clarifying statute? Has legislative review required long delays in adopting regulations?)

12. Do you believe that private or public interest groups have strengthened their lobbying position because of the establishment of legislative review of administrative regulations? If so, which type of groups and what would you suggest be done to protect against such a development?
13. What is your overall assessment of how well (or not well) legislative review of administrative regulations is functioning?
14. What changes, if any, are necessary for a more effective program?
15. What are the favorable (beneficial to the public) and the unfavorable results of regulation review by the Legislature? What are the reasons for this?
16. Would you like to add any comments regarding your state's experience with this type of legislative review?

SUMMARY RESULTS OF QUESTIONNAIRE SURVEY OF
EXECUTIVE OFFICES RESPONSIBLE FOR ADMINISTRATIVE REGULATIONS

Responses to Questions:

1. Most regulations review commenced subsequent to 1975.
2. The scope of regulations review varies widely.
3. The staff assigned to review regulations generally consists of attorneys or attorneys and analysts.
4. Types of powers that may be exercised range from advisory to nullification of regulations.
5. The number of pages of regulations ranges from 3,500 to 18,000.
6. An average of approximately 1,000 regulations are submitted annually for review by the legislatures. Generally, it is believed that all regulations submitted for review are revised by the legislatures.
7. Generally, administrative agencies responsible for regulations were unaware of how much time the members and staff spend on regulations review.
8. The length of time taken to review regulations ranges from two weeks to four months.
9. Generally, legislative committees reviewing regulations consult with the promulgating agency prior to vetoing a regulation or recommending that it be vetoed by the legislature.

10. The administrative agencies responded that legislative committees have commented on as few as 10 regulations to as many as 300 regulations. The number of vetoes of regulations in different states ranged from zero to 150 since regulations review commenced.
11. The administrative agencies were not clear in their responses as to the effects of legislative action on reviewing regulations. Some said that the review had almost no effect on regulations, others stated that the administrative agencies seriously consider legislative comments, others said that regulation review has caused apprehension in the agencies and friction between the legislature and the agencies, and one said that legislative review is a joke in their state because the staff doesn't have expertise with regulations.
12. Generally, the administrative agencies were not aware of whether interest groups had or had not strengthened their lobbying position as a result legislative review of administrative regulations, although three said it had not strengthened and two said it had.
13. Approximately half of the administrative agencies responded that regulation review was working well while the other half stated it was working poorly. Those who said it works well attributed this to more citizen input, the fact that members of the committee are interested in this subject and spend time reviewing regulations, and that regulation review places a restraint on rulemaking. Those who said regulation review works poorly stated that lack of member interest and lack of staff on the review committee has resulted in either only special interest regulations being reviewed or in regulation review not having any effect on regulations.

14. The administrative agencies stated that the changes needed to establish a more effective regulation review procedure include: a) more staff and a full-time legislature, and b) development of staff to assist the committees.

15. The favorable comments made by administrative agencies regarding regulation review are: a) agencies are discouraged from promulgating regulations that exceed legislative intent; b) the public is provided greater input on regulations, c) review by outside interests rather than by only departmental employees benefits the public; d) regulations have improved, and e) legislators and state agency officials have gained knowledge about the problems of the other branch of government.

The unfavorable comments made by administrative agencies regarding regulation review are: a) review of regulations is not affecting regulations and it increases costs; b) regulation review might prevent agencies from taking firm stands on unpopular topics; c) some personal financial interests are believed to be at stake; and d) there result delays in effecting state policies.

16. Among the comments made by administrative agencies about regulation review are: a) a staff of 25 persons is needed to keep up with and properly research each rule and give the legislative committee an honest, correct and intelligent analysis of each rule; b) the legislature should cease delegating so much authority to administrative agencies; and c) legislative intent should be clearly expressed in legislation.

APPENDIX 4

CONSTITUTIONALITY OF THE CONGRESSIONAL VETO

(Excerpt from Congressional Report*)

There have been significant constitutional objections raised against congressional veto provisions since their inception in the thirties. However since none of these objections have been considered by a court, their validity remains speculative. Arguments against the constitutionality of the congressional veto generally rest upon the separation of powers doctrine.

Opponents of the legislative veto argue that Congress by use of the congressional veto is attempting to usurp the constitutional responsibility granted to the President by article II of the Constitution and especially the general provision in section 3 of article II that he shall faithfully execute the laws. If the congressional veto can be viewed primarily as a legislative activity, opponents contend that at least in the case of a committee veto, there is a impermissible delegation of the legislative power to the committee. Some opponents have argued also that any Act of Congress which has legislative effect must have the concurrence of both Houses and be signed by the President in order to go into effect. Therefore, it is unconstitutional for Congress to delegate to only one of its Houses or to a committee the authority to disapprove or approve an Executive action.

Proponents of the constitutionality of the congressional veto argue that this device is emphatically legislative in character since it requires legislative enactment in the form of a statute in order for its provisions to go into effect. The fact that Congress conditions its grant of authority to the Executive upon its subsequent right to "veto" proposed Executive action taken pursuant to the underlying statute does not destroy the fundamentally legislative character. Article I, section 8 of the Constitution grants Congress considerable legislative powers and the authority to make all laws "necessary and proper" for the execution of these powers. The congressional veto device is conditional legislation well within the legislative authority granted by the Constitution. In response to the additional argument that the committee veto is invalid because of Congress' impermissible delegation of legislative authority to its committee, proponents of the congressional veto would argue that since Congress has broad authority to delegate its legislative powers to Federal agencies, it could surely delegate its legislative powers to several of its own committees acting as an agent of the Congress.

*Congressional Oversight: Methods and Techniques, prepared for the Subcommittee on Oversight Procedures of the United States Senate Committee on Government Operations, by the Congressional Research Service of the Library of Congress and the General Accounting Office, 94th Congress, 2nd Session, July 1976, pp. 18-19.

APPENDIX 5

1977-78 AND 1979-80 SESSION CALIFORNIA LEGISLATION REGARDING REVIEW OF ADMINISTRATIVE REGULATIONS

1977-78 Session

Resolution Chapter 48, Statutes of 1977, SCA 25 (Holmdahl), proposed that the California electorate eliminate the power of administrative agencies to declare statutes unconstitutional or unenforceable, unless an appellate court has made a determination that enforcement of the statute is prohibited by federal law or federal regulations. This measure was approved by the voters at the June 1978 statewide election.

Chapter 131, Statutes of 1978, AB 1026 (Vicencia), among other things, requires that the notice of proposed adoption, amendment, or repeal of a regulation contain either the express terms or a clear and concise summary of any existing laws and regulations directly related to the proposed action, a statement of the effect of the proposed action, and an estimate of direct costs or savings resulting from the proposed regulations.

Resolution Chapter 48, Statutes of 1978, ACR 45 (Chimbole), authorizes the Senate Rules Committee and the Assembly Speaker to direct standing committees or the offices of research of each house to study proposed or existing regulations. The reviewing committee or office is required to transmit its concerns, if any, and its recommendation that a concurrent resolution be adopted which either requests the regulatory agency to reconsider its action or the Legislature to enact a statute to restrict the regulatory powers of the state agency.

AB 36 (Lewis) would have established a Joint Legislative Committee on Administrative Procedure to review regulations of state agencies to determine if such regulations exceed the scope of authority vested by law in such agencies.

AB 56 (McVittie) would have directed the Legislature to review proposed regulations of state agencies to determine if such proposed regulations or emergency regulations are within the scope of authority vested in each agency by law.

AB 197 (McAlister) would have, among other things, required policy committees of the Legislature to receive administrative regulations, or rules and review the same for conformity with enabling legislation. If the committee found rules or regulations which do not conform to the intent of the enabling legislation, the committee could introduce a concurrent resolution to invalidate the regulation or rule.

AB 362 (Priolo) would have created the Joint Legislative Committee on Administrative Reform to review state regulatory agencies. This committee would have been required to: a) evaluate the perfor-

mance of state regulatory agencies in adhering to statutory authority; b) suggest corrective action on regulations that overlap or duplicate others; c) analyze the costs and benefits of agency regulations; and d) make recommendations on statutes and agency policies and regulations to promote the economic well-being of consumers, business, and government. An annual report on the committee's activities would have been submitted to the Legislature and the Governor. This measure would have remained in effect until January 31, 1983.

AB 365 (Chimbole) would have, among other things, required that proposed agency regulations be referred to appropriate committees of the Legislature for review and determination for consistency with the intent and purpose of the enabling statute of the relevant agency. If the committee determined a state agency is exceeding its statutory authority or acting inconsistent with the intent and purpose of the enabling statute of the relevant agency, the committee would have informed the state agency of such finding and the reasons therefor. If the state agency did not modify its proposed regulation in a manner which would, in the determination of the committee, bring it within the scope of authority vested in the agency, the committee would report its findings to the Senate and Assembly and recommend adoption of a concurrent resolution stating that the regulation is faulty.

AB 1435 (Egeland) would have required that notices of every proposed adoption, amendment, or repeal of regulation be filed with each member of relevant committees of the Legislature and mailed to interested advisory agencies in state government.

AB 1522 (Perino) would have established a Joint Legislative Committee with the authority to review agency regulations for conformance with state statutes. Notification by the committee to the agency that the proposed regulation was being considered would prevent the rule from taking effect until a committee recommendation was made or 30 days had passed. Approval of the regulation by the committee would permit the regulation to take effect. If the committee disapproves the regulation, it would seek disapproval of it by the Legislature via a concurrent resolution within 30 days of receipt of the regulation but failure to adopt the concurrent resolution within 30 days would permit the regulation to take effect.

ACA 17 (McAlister) would have proposed that the California electorate authorize the Legislature to invalidate state agency regulations by means of concurrent resolutions.

ACA 69 (Chimbole) would have proposed that the California electorate authorize the Legislature to suspend administrative regulations for up to 180 days.

SB 63 (Campbell) would have required that every adopted regulation or rule by a state agency be assigned to appropriate policy committees of the Legislature for review for conformity with enabling legislation. If the policy committee determined the regulation or rule is not in conformity with the enabling legislation, the committee could introduce a concurrent resolution invalidating it. If the concurrent resolution was adopted by both houses of the Legislature, the regulation or rule would be voided. This bill would become operative only upon the approval of the California electorate of a measure to authorize such legislative powers.

SB 71 (Paul Carpenter) would have, among other things, required appropriate committees of the Legislature to review proposed agency regulations to determine if they are within the agency's scope of authority. If the committee determined the agency has exceeded this authority, the committee would be required to notify the state agency of such finding within 30 days of having received the notice of proposed action. If the state agency did not modify its proposed regulation to bring it into conformity with the law, as determined by the committee, the committee would recommend its finding to both houses of the Legislature and recommend that a concurrent resolution disapproving such proposed regulation be adopted. No proposed regulation would become effective if the Legislature adopts a concurrent resolution disapproving such proposed regulation. This bill would have become operative only if SCA 11 of the 1977-78 Session is adopted by the electorate.

SB 973 (Zenovich) would have required appropriate standing committees of the Legislature to review agency rules for conformity with the scope and intent of enabling legislation. If the committee determined the proposed rules is unacceptable, such rule could not be promulgated without the consent of a majority vote of the Senate and Assembly. The bill would have also required the relevant committees to report to the Legislature on their review of all rules proposed by the agencies during the previous year.

SB 1217 (Greene) would have required that regulations initiated by state agencies be subject to approval of the Joint Legislative Budget Committee when such regulations have a General Fund cost impact in excess of \$500,000 and are not required by federal law, federal regulation, or court order.

SCA 8 (Campbell) would have proposed that the California electorate authorize the Legislature to approve and disapprove agency regulations by means of concurrent resolutions.

SCA 11 (Paul Carpenter) would have proposed that the California electorate authorize the Legislature to nullify agency regulations by means of concurrent resolutions.

SCA 41 (Zenovich) would have proposed that the California electorate authorize the Legislature to approve, disapprove, or make suggested changes to agency regulations by means of concurrent resolutions.

1979-80 Session

AB 171 (McAlister) would require the relevant standing committees of the Legislature to review administrative regulations for conformance with enabling legislation. If the committee finds the regulation conflicts with the intent of the enabling legislation, the committee may introduce a concurrent resolution to invalidate the rule. A Member of the Assembly or the Senate may, notwithstanding the findings of the committee, introduce such a concurrent resolution. If the concurrent resolution is adopted by both houses of the Legislature, the regulation is voided. This bill becomes law only if ACA 16 is adopted by the voters.

AB 215 (Vicencia) would (1) require that a copy of the California Administrative Register, which includes notices of proposed actions by administrative agencies, be supplied to each Member of the Legislature, (2) requires that the digest in the written statement accompanying new or emergency regulations be in a format similar to the Legislative Counsel's Digest on legislative bills; (3) require cost estimates in the statement accompanying the new or emergency regulations to be prepared pursuant to guidelines prescribed by the Department of Finance; and (4) authorize interested persons to seek injunctive relief to enjoin the effectiveness of regulations.

AB 1111 (McCarthy) would (1) establish an Office of Administrative Law to review proposed regulations pursuant to specified standards, (2) authorize the director to approve or disapprove of proposed regulations, (3) provide a procedure for reviewing existing regulations, and (4) require state agencies to make certain findings relative to regulatory actions.

ACA 16 (McAlister) would authorize the Legislature to invalidate administrative regulations by concurrent resolution.

SB 44 (Carpenter), as introduced, is the same bill as SB 71 of the 1977-78 Session.

SCA 4 (Carpenter) would authorize the Legislature to nullify administrative regulations by concurrent resolution.

BIBLIOGRAPHY

REVIEW OF ADMINISTRATIVE REGULATIONS

1. Administrative Rules...What is the Legislature's Role? Senate Research Service, Task Force on Critical Problems, New York State Senate. (Albany, New York: June 1976).
2. "Administrative Agency Powers, Proposition 5, 1978 Primary Election," California Journal. (Electorate votes for constitutional amendment which prohibits administrative agencies from declaring laws unconstitutional.)
3. Craft, Ray. Legislative Follow-Through: Profiles of Oversight in Five States, Series on State Legislatures and Public Policy, Center for State Legislative Research and Service, Eagleton Institute of Politics, Rutgers University, October 1977.
4. Congressional Oversight: Methods and Techniques, Congressional Research Service of the Library of Congress and the General Accounting Office, prepared for the Subcommittee on Oversight Procedures of the United States Senate Committee on Government Operations. (Washington, D.C.: U.S. Government Printing Office, July 1976).
5. Council of State Governments. "Legislative Review of Administrative Regulations," The Book of the States 1978-79. (Lexington, Kentucky: 1978), pp. 2-3 and 52-53
6. Eye on the Executive, Legislative Oversight Committee, New Jersey General Assembly, December 1977.
7. Finding Out How Programs Are Working: Suggestions for Congressional Oversight, Report No. PAD-78-3 to the Congress by the Comptroller General of the United States, November 22, 1977.
8. Government Research Corporation. "The Specter of the Legislative Veto," National Journal, The Weekly on Politics and Government, Vol. 10, No. 39, September 20, 1978.
9. Honorable Bob Eckhardt of Texas, R., House of Representatives, "Increasing the Indpendence of Regulatory Agencies," Congressional Record, March 28, 1977, p. E1819.
10. Improving Congressional Oversight of Federal Regulatory Agencies, Hearings before the United States Senate Committee on Government Operations, 94th Congress, 2nd Session, May 18, 20, 24, and 25, 1976 (Washington, D.C.: U.S. Government Printing Office, 1976).
11. Joint Committee for Review of Administrative Rules Reports...Books I and II, Joint Committee for Review of Administrative Rules, State of Wisconsin, January 1977.

12. "Key U.S. Regulatory Officials Propose Interagency Council to Issue New Rules," The Wall Street Journal, October 20, 1978.
13. "Legislative Oversight: Overruling the Rule-Makers," State Legislatures, Vol. 2, No. 5, October/November 1976, pp. 19-20.
14. Legislative Review of Administrative Regulations, Oregon Legislative Research Office, Report 75:106, August 8, 1975.
15. "Our Rotting 'Fourth Branch'," Reader's Digest, July 1975, pp. 128-133.
16. Report to the Governor and to the Legislature, Office of Administrative Hearings, California Department of General Services, January 1977.
17. Restoring the Balance: Legislative Review of Administrative Regulations, National Conference of State Legislatures, Legislative Improvement and Modernization Committee, April 1978.
18. Senate Bill No. 1463, (Nunn, D-CA) relating to improving agency rule making, Senate of the United States, 95th Congress, 1st Session, May 5, 1977.
19. Senate Bill No. 2011, (Schmitt, R-NM) relating to Congressional review of Executive Branch Rules, Senate of the United States, 95th Congress, 1st Session, August 4, 1977.
20. "State Administrative Regulation in California: Thicket Government," Cal Tax News, Vol. 19, No. 3, February 1, 1978.
21. State Constitutional Amendment No. 11, as amended May 26, 1978, proposed by Senator Paul Carpenter, State of California.
22. "State Supreme Court Says Agencies Can Declare Laws Unconstitutional," Sacramento Bee, November 26, 1976.
23. Study on Federal Regulation, Volume II: Congressional Oversight of Regulatory Agencies, United States Senate Committee on Government Operations (Washington, D.C.: U.S. Government Printing Office, July 1976).
24. "The Growth of California State Government, 1849 to 1975," California Data Brief, Vol. 1, No. 2, April 1977, Institute of Governmental Studies, Berkeley, California.
25. U.S. News and World Report, May 17, 1976, p. 8.
26. "What Will Happen When the Regulators Regulate Themselves?," National Journal, November 4, 1978, pp. 1769-1771
27. Wright, Boyd L. Legislative Review of Administrative Rule-Making in North Dakota: "A Necessary Extension of Legislative Control" or "An Unwarranted Intrusion of the Legislative Branch into the Executive Branch's Prerogatives?", Special Report No. 47, Bureau of Governmental Affairs, University of North Dakota, February 1976.

Law Review Articles

1. Clarkson, J.G. "History of California Administrative Procedure Act" (1964), 15 Hastings Law Journal 237.
2. Clarkson, J.G. "History of California Administrative Procedure Act" (1964), 15 Hastings Law Journal 237.
3. Cooper, F.E. "State Administrative Procedure" (1963), 49 American Bar Association Journal 29.
4. Cutler, L.N. and D.R. Johnson. "Regulation and the Political Process," The Yale Law Journal, Vol. 84, No. 7, June 1975. (Reprinted in Improving Congressional Oversight of Federal Regulatory Agencies, transcript of hearings before the U.S. Senate Government Operations Committee, 94th Congress, 2nd Session; May 18, 20, 24, and 25, 1976.)
5. Hanson, P. J. "Administrative Law Making" (1967), 42 State Bar Journal 661.
6. Hutchinson, J.A. "Rule Making Function of Administrative Agencies" (1964), 15 Hastings Law Journal 272.
7. Livingston, Gene. "Organizations and Administrative Practice" (1974), 26 Hastings Law Journal 91.
8. Steck, E., Jr. "California Legislation: Sources Unlimited" (1975), 6 Pacific Law Journal 537
9. Watson, H.L. "Congress Steps Out: A Look at Congressional Control of the Executive," California Law Review, Vol. 63, (reprinted in Congressional Oversight: Methods and Techniques, prepared for the Subcommittee on Oversight Procedures of the Committee on Government Operations (now Government Affairs), U.S. Senate, prepared by the Congressional Research Service of the Library of Congress, and the General Accounting Office, July 1976, pp. 121-230.

